

**MINUTES
JULY 29, 2005**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:10 a.m., on Friday, July 29, 2005, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Kim Lacey, Robin Shropshire, Gayle Skunkcap, Don Marble and Bill Rossbach

Board Members Absent: Susan Kirby Brooke

Board Attorney Present: Jim Scheier, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Carol Hendrickson, Lesofski & Waldstad Court Reporting

Department Personnel Present: Richard Opper, Director; Tom Livers, Deputy Director; John North, Chief Legal Counsel; Lisa Peterson, Director's Office; Claudia Massman, Legal; Keith Cristie, Legal; Norman Mullen, Legal; Jane Amdahl, Legal; David Rusoff, Legal; Steve Welch, Permitting & Compliance Division (PCD); Bonnie Lovelace, Water Protection Bureau (WPB), PCD; Tom Reid, WPB, PCD; Charles Homer, Air Resources Management Bureau (ARMB), PCD; David Klemp, ARMB, PCD; Jan Brown, ARMB, PCD; Brian Hohn, ARMB, PCD; Frank Gessaman, Enforcement Division; Art Compton, Planning, Prevention & Assistance Division (PPAD); George Mathieus, Water Quality Planning Bureau (WQPB), PPAD; Bob Bukantis, WQPB, PPAD; Christian Levine, WQPB, PPAD; Keith Large, Mine Waste Cleanup Bureau, Remediation Division.

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Bruce Williams, Fidelity Exploration & Production; Joanne Tweedy; Allan Minear, Big Horn Well Service; Nancy Owens; Darla Dunning; Tom Schneider; John Beaver; Gayle Joslin; Terry Minow; Anne Hedges, Montana Environmental Information Center (MEIC); Varner Bertelsen; Sherry Meader, self; Larry Sare, RMG; Bob Campbell; Jim Jensen; John Wilson, Montana Trout Unlimited; Jim Costello, Rock Creek Alliance; Jon Krutar, The Blackfoot Legacy; Rex Mongold, self; Charlie Gephart, Tongue River Water Users (TRWU); Mark Fix, Northern Plains Resource Council (NPRC); Pat Helvey, self; Ray Muggli, NPRC & self; Clare Witcomb, Carbon County; Jeanne Charter, Bull Mountain Land Alliance; Dixie Stark, self; Roxa French, self; Art Hayes, Jr., TRWU; Janet McMillan, NPRC; Amy Frykman, NPRC; Roger Muggli, Tongue & Yellowstone Irrigation District;

Ross Keogh, Citizens for Resource Development (CFRD); Dick Wilson, CFRD; B.J. "Boo" Crane, CFRD; Clint McRae, Rocker Six Cattle Company; Beth Kaeding, self; Nick Golder, NPRC & Golder Ranch; Kendall VanDyk, NPRC; Tom Emmons, CFRD; Brett Emmons, CFRD; Ann Emmons, CFRD; Rick Mover, NPRC; Don Allen, Western Environmental Trade Association; Jack T., NPRC; Jim Rogers; T.H. Crawford, NPRC; Dave Bockelmanry, ALL Consulting; Martha HaysKing; Patricia Ramos, Northern Cheyenne Environmental Protection Division (NCEPD); Joe WalksAlong, Jr., NCEPD; Bill Courtney, EMIT; Suzin Kratina, NPRC; Anickia Kratina-Hathway; Zoe Kratina-Hathway; James Sweaney, Bear Creek Council; Keith Bales, SD 20; Jim Kuipers, NPRC; Christl Bales, self; Stephen Begley, NPRC; Brian Cebull, Nance Petroleum; Jesse Martin, Nance Petroleum; William WalksAlong, Northern Cheyenne Tribe; Dan Arthur, ALL Consulting; Anthony Biel; Peter Lesica; Bill Schafer, CBNG Industry; Andrea Heyneman, Stillwater Protection Association; Gail Abercrombie, Montana Petroleum Association; N.L. Rourke, Bear Creek Council; Joe Kolman, Environmental Quality Council; Connie Morris, self; Janet Rice, CFRD; Rick Rice, CFRD; Donna Wilson, CFRD; John Morris, self; Jim Guercio, OW Ranch; Michael Nicklin, Pinnacle; Ken Nelson, self; Charles Tweedy; Harrison Schumaeuhsr; Peter Schoonmaker, Pinnacle; Karen Brown, Coalbed Natural Gas Association; R. Bret Rhinesmith; Wilbur Wood, self; Carl Bock, W. Wildlife Sanctuary; Steve Kern; Bob Kimball, CDM; Tom Osborne, HIS-Fidelity; Brenda Lindlie-Hall, TRWU; Jason Oire, self; Judy Staigmler; Dorothy Harper, self; Neil Stiff Arm, Moniquenique Community Council; Matt Clifford, Clark Fork Coalition; Mike Cooney; Larry Mitchell, self; Dustin Stuart, Montana Mining Association;

- I.A. | Review and approve minutes of June 3, 2005, meeting.
- Ms. Lacey MOVED for approval of the June 3, 2005, meeting minutes. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- II.A.1.a | In the matter of CR Kendall Corporation's request for a hearing to appeal DEQ's decision to deny a minor permit amendment under the Metal Mine Reclamation Act, BER 2002-09 MM.
- Mr. Scheier had no further information to add beyond the update provided in the agenda.
- II.A.1.b | In the matter of the Petition for Review of Hazardous waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleums, Inc., BER 2003-14 HW.
- Mr. Scheier had no further information to add beyond the update provided in the agenda.
- II.A.1.c | In the matter of violations of the Montana Water Quality Act by the City of Lewistown Wastewater Treatment Plant, BER 2004-15 WQ.
- Mr. Scheier had no further information to add beyond the update provided in the agenda.
- II.A.1.d | In the matter of violations of the Montana Public Water Supply Laws by Darwin Simac d/b/a Jackson Creek Saloon, BER 2005-05 PWS.
- Mr. Scheier had no further information to add beyond the update provided in the agenda.
- II.A.1.e | In the matter of violations of the Montana Water Quality Act by Bar S Livestock, Inc., BER 2005-06 WQ.
- Mr. Scheier had no further information to add beyond the update provided in the agenda.
- II.A.1.f | In the matter of violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.
- Mr. Scheier informed the Board that DEQ had submitted a proposed schedule and that the hearing examiner assigned to the case will set the schedule.
- II.A.1.g | In the matter of violations of the Opencut Mining Act by Kenneth Mikesell, d/b/a Mikesell Gravel Mine, BER 200510 OC.
- Mr. Scheier had no further information to add beyond the update provided in the agenda.

II.A.1.h In the matter of the application by Patty Irvine, d/b/a Marks Environmental Service, for renewal of septage disposal license, BER 2005-11 SW.

Mr. Scheier said that under the current schedule the prehearing conference is scheduled for September 28. He said Ms. Irvine had recently filed a letter that appeared to be a request for the appeal to be cancelled and that, in response, DEQ had filed one motion requesting that all deadlines be stayed and a second motion to dismiss the contested case. He said the hearing examiner assigned to the case would rule on both motions.

II.A.1.i In the matter of violation of the Opencut Mining Act by Mickelson Rock Products, LLC at Tricon Pit # 2, BER 2005-12 OC.

Mr. Scheier had no further information to add beyond the update provided in the agenda.

II.A.1.j In the matter of violations of the Montana Operator Certification and Public Water Supply Laws by Richard Kelly at the Ten Mile-Pleasant Valley lagoons, BER 2005-13 PWS.

Mr. Scheier had no further information to add beyond the update provided in the agenda.

II.B.1 FAQs Update

Mr. Scheier said the Frequently Asked Questions that were included in the Board's packets would require further updating based on recent amendments of 75-2-211 MCA, House Bill 581. He said the statutory amendment modified the deadlines for affidavits and air quality permit appeals and suggested the DEQ attorney who ultimately will be working on the FAQs should wait until DEQ adopts a final rule implementing the statutory change.

III.A NPRC Petition for Rulemaking

Director Opper said the Department is officially neutral on the petition. He said the petition has three primary components: 1) re-injection of CBM-produced water; 2) water treatment; and 3) a non-degradation provision. He said it was questionable whether DEQ has the authority to require re-injection.

Mr. Compton talked about the unconventional approach to nondegradation that the Board had adopted previously. He talked about nondegradation in regard to both numeric and narrative standards.

Chairman Russell explained the options the Board had to consider.

Mr. Fix said the focus of the proposed rule is to establish a framework for responsible management of water taken from the aquifers in the coalbed methane

extraction process. He said the petition does not change the water quality standards for sodium and salinity that were previously set by the Board, but rather alters the manner in which those standards are implemented. More specifically, he said it would restore a legal avenue for Montana to prevent Wyoming discharges from polluting the Tongue River and other rivers right up to the standards by removing the exemption from nondegradation. He urged the Board to move forward with the petition.

Mr. Reisner spoke about the history of the Federal Clean Water Act and the Montana Water Quality Act and about BACT (best available control technology). He talked about the two parts of the petition. He said a proposed new rule that would require zero discharge unless re-injection is not technically feasible due to the lack of suitable geologic formations at the site-specific project level. He said where re-injection wasn't feasible, the new rule would require treatment to meet into-the-pipe limits, which can be met using ion-exchange technology. He said the new rule would also exempt produced water that is put to legitimate stock-watering use and acts to ensure ranchers can use the water for such purposes.

Mr. Reisner said a second part of the petition includes an amendment to the existing rule making coalbed methane discharge water subject to Montana's nondegradation policy. He said the proposed rules do not change the numeric water quality standards established previously by the Board. He said the petitioners request the Board initiate the rulemaking.

Mr. Tuholske stressed that the petition contains ample evidence to go forward with rulemaking. He cited several areas of Montana Code Annotated that provided the Board with ample authority to move forward with rulemaking.

Mr. Kuipers spoke about a study conducted in 2004 by himself and others, on behalf of Northern Plains Resource Council, to look at the technical and economic feasibility of coalbed methane treatment. He said the study showed that both re-injection and treatment are feasible. He said the petitioners believe re-injection is a good first option, treatment being second. He recommended the Board initiate the rulemaking.

Mr. Schneider spoke in length about the CX Field. He urged the Board to move forward with the rulemaking.

Ms. Lindlief-Hall referenced a letter originally sent to Mr. North, which she said provided a legal analysis and framework giving the Board authority to move forward with this rulemaking.

Mr. Muggli spoke about aquifer drawdown and urged the Board to support re-injection.

Ms. Morris said there is no proof that coalbed natural gas development will cause complete and irreversible damage to the aquifers. She discussed recharge of the

aquifers. She explained some research she performed that showed sodium levels in both pre-methane and post-methane waters were more than 200 percent higher (200 and 236, respectively) at the mouth of the Tongue River than at the state line. She suggested research showed the same evidence for suspended sediments: the high numbers are not coming from the state line.

Mr. Osborne talked about the regulations, monitoring and reporting required of coalbed producers.

Mr. Schafer discussed the previous rulemaking process for EC and SAR and suggested that they are working as they should. He said the Tongue River currently meets those standards. He said there had been no detectable change in water quality as a result of coalbed natural gas development, based on analysis of USGS water quality data. He talked about the Agronomic Monitoring Protection Program and irrigated soils, and said there is no indication of crop yield impairment at current EC levels. He urged the Board to give the existing rules a chance to work and to not initiate the rulemaking.

Mr. Cebull suggested the petition is unnecessary, unreasonable and unstable. He said the Water Pollution Control Advisory Council voted in their July 6 meeting to recommend that the proposed rulemaking not be initiated, finding the rulemaking process not necessary. He encouraged the Board to reject the petition.

Mr. Bales handed out copies of a bill he carried in the 2001 Legislature regarding coalbed methane development. He said NPRC was there requesting the Legislature mandate re-injection and that the Legislature said no.

Mr. Joscelyn suggested that if the Board chose to go forward with this rulemaking, an Environmental Impact Statement (EIS) would be required as part of the process.

Mr. Tuholske discussed the DEQ's and DNRC's EIS. He said the petition addresses groundwater depletion issues. He said he believes the Board does indeed have statutory authority to proceed with this rulemaking and that there has been a prima facie case presented at this hearing and at the previous hearing that there is a need for this rulemaking. He asked that the Board advance the petition to the rulemaking process.

Mr. Reisner emphasized that the petitioners were not seeking to change the water quality standards, but rather to set technology-based requirements to eliminate the discharge of pollutants.

Mr. Kuipers said the intention of the petition with regard to re-injection is that it be the first tool in the toolbox that is looked at.

Mr. McRae talked about water quantity and how drilling of coalbed methane wells will affect water rights. He urged the Board to initiate the rulemaking.

Ms. Lindlief-Hall, Ms. Charter, Mr. Watson, and Mr. Hayes, Jr. spoke in favor of the petition and the initiation of rulemaking.

Mr. Williams discussed the EIS and said it identified beneficial uses as the preferred alternative for managing water associated with the production of coalbed natural gas.

Mr. Nicklin discussed previous comments regarding drawdown, dewatering from mining, pumping rates and volume. He said coalbed aquifers have low permeability. He said to mandate one type of treatment is not realistic.

Mr. Joscelyn again stated the Board does not have authority to proceed with this rulemaking.

Mr. Guercio noted that there were many taxpayers and ranchers in opposition to the petition, not just industry. He said he, as well as many of the other ranchers, want to use the discharge water for beneficial uses. He said many of his shallow aquifers are more contaminated and in worse shape than any of the CBM water.

Further discussions took place regarding: whether the Board had a duty to adopt standards of this type; re-injection; dilution through a discharge based on flow of the water body; and soil types.

Ms. Stark, Mr. Gephart, Ray Muggli, Mr. Nelson, Ms. Kaeding, Mr. Michaelson, Mr. Golder, Mr. Sweaney and Ms. Hammond spoke in support of the petition.

Ms. Wilson, Mr. Morris, Mr. Schoonmaker, Mr. Crane, Mr. Rhinesmith, Mr. Emmons, Ms. Tweedy, and Ms. Brown spoke in opposition of the petition.

Mr. Scheier outlined the Board's options and discussion took place on the matter.

Mr. Marble MOVED to initiate the rulemaking as proposed. Ms. Shropshire SECONDED the motion. Further discussion took place among the Board.

Chairman Russell noted some errors in the notice: 1) page 12, an "r" was omitted from the word "wastewater"; and 2) page 3, a sentence refers to "methane discharges" -- a better term would be "discharges of methane wastewater." Mr. Rossbach MOVED to include the editorial changes. Ms. Lacey SECONDED the motion. The motion CARRIED with a unanimous VOTE.

Chairman Russell called for a VOTE on the Original motion. The motion CARRIED 5-1.

Ms. Lacey MOVED that the Board hear the rulemaking. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- Discussion took place regarding logistics of the hearings. Mr. Rossbach MOVED to hold three hearings days -- one in Miles City and one in Lame Deer, back to back, and a third one back in Helena. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- Ms. Lacey MOVED to hold the Lame Deer and Miles City hearings on November 10 and 11, and the Helena hearing on December 2, at the regularly scheduled Board meeting. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- Chairman Russell noted that November 11 was a holiday. Mr. Rossbach MOVED to hold the Lame Deer and Miles City hearings on November 9 and 10. Ms. Lacey SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- Chairman Russell reviewed the draft written decision prepared by Mr. Scheier. Mr. Rossbach MOVED to authorize the Board Chair to sign the decision. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.B.1 In the matter of final action regarding the request for hearing of nature View Estates, BER 2004-16 SUB.
- Mr. Rossbach recused himself from hearing this issue -- he is the Chair of the Missoula City-County Health Board.
- Mr. Scheier said a stipulation for dismissal, signed by the parties, was included in the Board packets, along with a proposed order of dismissal for the Board's approval.
- Chairman Russell called for a motion authorizing the Board Chair to sign the order of dismissal. Ms. Lacey so MOVED. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.B.2 In the matter of final action regarding violation of the Montana Strip and Underground Mine Reclamation Act by Westmoreland Resources, Inc., BER 2005-01 SM.
- Mr. Scheier said that a stipulation for dismissal along with an administrative order on consent and a proposed order of dismissal was included in the Board packets.
- Chairman Russell called for a motion to authorize the Board Chair to sign the order of dismissal. Mr. Marble so MOVED. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.F In the matter of a Standing Interim Hearing Examiner.
- Chairman Russell explained that Tom Bowe would not continue as the Board's attorney, that Mr. Scheier is attending on behalf of the Attorney General's Office, and that Katherine Orr will be the primary Board attorney.

Chairman Russell called for a motion to appoint Katherine Orr standing interim hearing examiner. Mr. Rossbach so MOVED. Mr. Marble SECONDED the motion. Further discussion took place and Chairman Russell expressed his appreciation for the work Mr. Bowe had done for the Board over the previous few years. The motion CARRIED with a unanimous VOTE.

Mr. Scheier explained that Tom Bowe was appointed hearing examiner in several pending cases so the Board needed to reassign those cases.

Mr. Rossbach MOVED to assign Ms. Orr to all pending cases that were previously assigned to Mr. Bowe. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.1 In the matter of a new contested case regarding violations of the Opencut Mining Act by Century Companies, Inc., BER 2005-14 OC.

Mr. Scheier said the Board could appoint Ms. Orr to be the permanent hearing examiner for this case or choose to hear the case.

Chairman Russell called for a motion to appoint Ms. Orr to be the permanent hearing examiner for this case. Mr. Rossbach so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.2 In the matter of the new contested case regarding the request for hearing of Sunnyside Orchards, BER 2005-15 SUB.

Chairman Russell called for a motion to appoint Ms. Orr as permanent hearing examiner for this case. Mr. Rossbach so MOVED. Ms. Lacey SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.D In the matter of the remanded case regarding the issuance of Air Quality Permit No. 3182-00 for the Roundup Power Project, BER 2003-04 AQ.

Mr. Scheier reminded the Board that at the last meeting the case had not yet been remanded to the Board by the District Court, that it was remanded June 15, 2005, and that the parties had then requested several extensions of time to file briefs stating their positions on how the Board should move forward with the case.

Mr. Scheier said that on July 15, DEQ had filed an unopposed motion to stay contested case proceedings along with a proposed order. He said the order stated that on July 12, DEQ issued a determination to Bull Mountain Development Company that Permit No. 3182-00 had become invalid due to a lack of commencement of construction within 18 months after DEQ's notice of MACT had become final. Mr. Scheier said the motion states that the parties are in agreement that the Board's consideration of the contested case on remand can be indefinitely stayed to allow Bull Mountain time to determine how it intends to proceed. He said the motion also states

that any time after 30 days following the Board's stay order, any party can request the Board take further action or reactivate the case.

Mr. Scheier said he had reviewed the motion and the proposed order. He said it was appropriate for the Board to sign the proposed stay order.

Chairman Russell called for a motion to authorize the Board Chair to sign the proposed stay order. Mr. Rossbach so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.E.1 In the matter of the Department's request to initiate rulemaking to implement House Bill 581.

Mr. Homer said the Department is requesting that the Board initiate rulemaking to implement House Bill 581, passed by the 2005 Legislature. He said the Bill requires the Board to adopt a period of 15 days in which the public may submit comments on air quality permits, but that the 15-day period already exists in the rules, so it is not a change. He said the change being considered is a requirement that the Board adopt rules to allow the Department to extend that comment period when it is in the public's best interest, or upon request of either a member of the public or the applicant.

Chairman Russell called for public comment on the matter. There was no response.

Chairman Russell called for a motion to initiate the rulemaking, appoint Ms. Orr as presiding officer and to establish September 14 as the hearing date. Ms. Lacey so MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

Discussion of Agenda Item III.E.2 revealed conflicts with industry on the hearing date. Mr. Rossbach MOVED to allow Ms. Orr to set a hearing date. Ms. Lacey SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.E.2 In the matter of the Department's request to initiate rulemaking to implement Senate Bill 95.

Mr. Homer explained that Senate Bill 95 was passed by the 2005 Legislature to allow oil and gas well facilities to drill a well or construct their source prior to obtaining a permit. He said this would allow companies to drill the wells and determine potential emissions and whether a permit was actually needed (dry wells don't require permits) prior to submitting their air quality permit application.

Mr. Homer said that the bill also requires the Board to adopt standards that would be applicable during the time the well operates from well completion until the application is required, 60 days later. He said if a facility complies with the requirements during that time, they might be able to continue to operate until the Department's decision on the permit is final.

Mr. Homer said the standards being proposed are reflective of what is currently being done in the permits, including BACT standards. He said requirements for the wellhead, tanks, lead testing, recordkeeping, reporting and any associated compressor engines are also included. He said this would only apply to facilities constructed after March 16, 1979, when the air permitting program went into effect.

Mr. Homer said discussions with the regulated industry are ongoing and some of those folks are interested in speaking to the Board now. He said the Department is requesting the Board initiate the rulemaking and that discussions with Ms. Orr had taken place and a proposed hearing date of September 13 has been tentatively scheduled, but that specific industry members have another event around that time and they would like to work out a different date so that they can participate in the hearing.

Mr. Homer responded to Board member questions.

Chairman Russell opened the floor for public comment on the matter.

Ms. Abercrombie thanked the Department for working closely with members of the Montana Petroleum Association. She said they are looking for controls that are flexible enough so that an operator doesn't have to put on unnecessary controls. She said they are still working with DEQ on some of the particulars and that is a cooperative effort.

With no further public response coming forth, Chairman Russell called for a motion to initiate the rulemaking and appoint Ms. Orr as presiding officer. Ms. Lacey so MOVED. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.G

In the matter of the petition of the Montana Environmental Information Center to initiate rulemaking to amend ARM 17.24.116 pertaining to reclamation plans for metal mine permits.

Mr. Barber said the rulemaking petition is being brought forth by the Montana Environmental Information Center and the Fort Belknap Community Council. He said the petition states that the Department cannot grant any new mining permits that require treatment for carcinogens, toxins, after reclamation of the mine is complete – no perpetual water treatment.

Mr. Barber said the Board has ample authority to adopt this rule beyond the general rulemaking authority cited in the petition. He cited 82-5-301(2), 82-4-302(1)(g), and 82-4-336(12), MCA, as mandating a rule of this sort.

Mr. Barber cited necessity for the rule -- perpetual water pollution poisoning water resources and harming property rights of downstream landowners.

Mr. Stiff Arm presented a short video on the kinds of projects they are working on at Zortman-Landusky.

Mr. Clifford cited the Mike Horse Mine in the Upper Blackfoot River and the Beal Mountain Mine as examples of why this rule is needed.

Mr. Kuipers said he has studied the entire history of major mines in the United States, including the water quality predictions and results. He said 10 of the 13 major mines permitted in Montana since 1975 either presently require or will most likely require water treatment in perpetuity, according to DEQ. He said typically those mines don't have money, therefore the taxpayers wind up paying for the water treatment.

Mr. Cooney said that while the Senate Finance Committee was able to approve money for trust fund this year, they don't know from year to year if that will be possible. He also said that they don't know if the amount they appropriated for Zortman-Landusky this last time will be enough. He urged the Board to look closely at the proposal and to act accordingly.

Mr. Mitchell spoke about his part in a review conducted by the Environmental Quality Council during the 2003-2004 interim regarding continuing concerns over water quality and reclamation at abandoned Pegasus Gold Corporation properties at Zortman-Landusky. He said he supports the request for the Board to initiate rulemaking that would require advance proof that long-term or perpetual water treatment at closed mines will not be necessary before an operating permit is issued.

Mr. Krutar said the Blackfoot Legacy is extremely concerned about any mine at the headwaters of the Blackfoot River and that they do support this petition for the proposed rule.

Mr. Costello said it is time to take a proactive stance and take proactive measures to protect against further liability and to ensure that Montana's communities, waters, fisheries and wildlife are protected from the harmful effects of long-term mining pollution. He said the Mineral Policy Center and the Rock Creek Alliance support this rule because it fulfills the intent of Montana law and the Constitution. He said the rule would also protect Montana taxpayers.

Mr. Wilson said Montana Trout Unlimited would ask the Board to think about expanding the scope of the petition to include nitrates, nutrients, thermal pollution and other kinds of pollution that are detrimental. He said they also recommend the Board change the statute that allows the department to allow water treatment at mines in perpetuity.

Mr. Stuart informed the Board that members of the Montana Mining Association had contributed a lot of money to the state of Montana, as well as donated supplies such as gravel for things such as building an elementary school in Clancy. He said he would like the Board to not move forward with the rulemaking because: 1) the language "conclusively demonstrates"; 2) they have not had enough time to review the

petition to see exactly which mines will be affected; 3) the cost of exploration in Montana is high and companies might not be willing to spend that money if there was a chance they would not be able to get the permit; and 4) the people of Montana have already spoken to this issue through ballot measure I-22 in 1996. He asked that the Board stand with the voters of Montana and deny the petition.

Mr. Histoe talked about the Whitlock process, a biological treatment for water containing cyanide. He said there was no rational scientific explanation to choose two years for treatment. He talked about the language "conclusively demonstrate", "treatment" and "mixing zones" in the proposed rule. He requested that the Board reject the petition based on his comments.

Mr. Joscelyn claimed the proposed rule was beyond the Board's jurisdiction because it would restrict water treatment. He suggested the petitioners would have to go to the Legislature in order to get the change they are proposing.

Mr. Allen asked that if the Board moved forward with the rulemaking, the word "fully" in regard to reclamation not be included. He also asked the Board to consider whether the rule would be retroactive. He asked the Board to not go forward with the rulemaking.

Chairman Russell reviewed the options of the Board outlined in the Executive Summary prepared by the Department: 1) grant the petition and initiate rulemaking; 2) deny the petition in writing; or 3) schedule and take action at a special meeting before the statutory deadline, which will be sometime mid-September. He said the Board could also request the petitioners to waive the statutory deadline for an amount of time sufficient to allow the Board to take action at its regular September meeting.

Mr. Rossbach MOVED to adopt the proposed notice. Ms. Shropshire SECONDED the motion. Further discussion took place. The motion CARRIED with a unanimous VOTE.

Ms. Shropshire MOVED to have the Board hear this rulemaking. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

Mr. Jensen requested that the Board hold at least two hearings, with one being in Harlem or Fort Belknap.

Mr. Stuart requested the second hearing be held in Boulder.

Further discussion took place regarding dates for the hearings, when the notice would need to be published, at what meeting the final decision would be made and how much time the Department would need to draft the final adoption notice with responses to comments. It was decided a telephonic meeting would take place in a few weeks to make the final decision on dates for the hearings.

IV. General Public Comment

Chairman Russell called for public comment on any matter before the Board that was not on the agenda.

Mr. Allen referred the Board to a letter contained in the Board packets. The letter requested that when a petition for rulemaking comes in from an organization, Board members be required to declare their membership to that organization.

V. Adjournment

Chairman Russell called for a motion to adjourn. Ms. Shropshire so MOVED. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 4:55 p.m.

Board of Environmental Review July 29, 2005, minutes approved:

JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE